UNITED NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL*

CAT/C/25/D/122/1998
15 February 2001

ENGLISH
Original: FRENCH

COMMITTEE AGAINST TORTURE
Twenty-fifth session
13-24 November 2000

VIEWS OF THE COMMITTEE AGAINST TORTURE UNDER ARTICLE 22, PARAGRAPH 7, OF THE CONVENTION AGAINST TORTURE AND OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Communication No. 122/1998

Submitted by: M.R.P. (name deleted)
(represented by counsel)

Alleged victim: The author

State party: Switzerland

Date of communication: 7 October 1998

The Committee against Torture, established under article 17 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

Meeting on 24 November 2000,

Having concluded its consideration of communication No. 122/1998, submitted to the Committee against Torture under article 22 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment,

---

* Made public by decision of the Committee against Torture.

GE.01-40529 (E)

Having taken into account all information made available by the author of the communication and the State party,

Adopts the following decision:

1.1 The author of the communication is Mr. Mizanur Rahman Pir, a citizen of Bangladesh born in 1969 and currently residing in Switzerland, where he applied for asylum on 29 August 1997. His application having been turned down, he maintains that his forcible repatriation to Bangladesh would constitute a violation by Switzerland of article 3 of the Convention against Torture. He is represented by counsel.

1.2 In accordance with article 22, paragraph 3, of the Convention, the Committee transmitted the communication to the State party on 27 November 1998. At the same time, the State party was requested, pursuant to rule 108, paragraph 9, of the Committee's rules of procedure, not to expel the author to Bangladesh while his communication was under consideration by the Committee. In a submission dated 22 January 1999, the State party informed the Committee that steps had been taken to ensure that the author was not returned to Bangladesh while his case was pending before the Committee.

The facts as submitted by the author

2.1 The author claims to be a member of the Bangladesh National Party (BNP), the main opposition political party. He was president of the BNP Union from 1994 to 1997 and vice-president of a regional BNP youth organization (the Yuba Dubal) as of 1997.

2.2 On 13 January 1997, the author and his brother were apparently attacked by members of the Awami League (AL), the political party in power. The author managed to flee, but his brother was seriously injured. A complaint was lodged with the police. The police arrested one of the suspected attackers, but quickly released him without charge. Members of the arrested person's family also exerted pressure on the author, who in the end withdrew his complaint.

2.3 After that incident, the author was forced to leave his home during the day. In the night of 13-14 June 1997, an AL member who was a driver for one of the organization's leaders, Mr. Shafijrahman, was killed. The attack's intended victim was apparently Mr. Shafijrahman himself, who was prompted to lodge a complaint against the author and four other BNP sympathizers. In that regard, the author points out that, in Bangladesh, it is common practice for BNP members to have complaints lodged against them and to be charged on non-existent grounds; this, in fact, constituted an abuse of power by AL members to intimidate and eliminate political opponents. After the complaint was lodged, the author decided to leave his country immediately.

2.4 The author arrived in Switzerland on 26 August 1997 and applied for asylum on 29 August 1997. His application was turned down on 7 January 1998, essentially on the grounds that the attack against him and his brother had not been carried out by the State. The author appealed the ruling to the Swiss appeals court dealing with asylum matters. The appeal was rejected on 15 April 1998.

Merits of the complaint

3.1 The author states that Bangladesh is a country with gross, flagrant and mass human rights violations, within the meaning of article 3, paragraph 2, of the Convention. Given that a complaint had been lodged against him, there is serious reason to believe that he risks being subjected to torture should he be returned to Bangladesh. Torture and ill-treatment are commonplace in Bangladesh, the prisons are overcrowded and prison sanitary conditions are inhuman. The author claims that, in December 1997 alone, at least four people were killed while remanded in custody.

3.2 The author also recalls that the vice-president of Yuba Dubal had been the target of intimidation on the part of Awami League members more than once. He considers that the charge of murder against him is part and parcel of the climate of oppression prevailing in his country and that the aim is to eliminate him personally as an opponent. He also considers that, if he had been arrested, he would probably be in prison and the victim of abusive treatment and torture. Since the judiciary is controlled by those in power, it is unlikely he would be acquitted and he therefore ran the risk of life imprisonment or the death penalty.

Observations by the State party on the admissibility and merits of the communication

4.1 The State party did not contest the admissibility of the communication and, in a letter dated 18 June 1999, made observations on its merits.

4.2 The State party points out that there remains some doubt as to the author's true identity. Those doubts stem not only from the fact that the author's name is spelled in two different ways in the translation of the documents he produced, but also from the absence of the certificate that the author undertook to provide. It is therefore difficult to be certain that the documents submitted to the Swiss authorities refer to the author.

4.3 The State party also wishes to inform the Committee about the contradictions observed in the course of the two hearings during the asylum procedure. At the first hearing, the author stated that the person who had been killed was called Babu, but, at another hearing, he said that the person was called Abul Kalama and that he knew of no other name for that person. The State party nevertheless emphasizes that that contradiction alone is not a sufficient basis for concluding that the communication is unfounded.

4.4 The State party considers, contrary to the author, that the Bangladeshi police took a number of measures to prosecute the perpetrators of the attack on the author and his brother. In addition, the author and his brother could have taken the matter to a higher court. Lastly, the State party points out that, after the incident, the author continued to live at home, which would seem to prove that he no longer stood in great fear of his political enemies.

4.5 Although it acknowledges the existence in Bangladesh of politically motivated complaints (i.e. complaints that are not based on facts, but whose sole aim is to cause trouble for a political adversary), the State party underlines that the administrative inquiries that follow on

the complaints are legitimate and therefore in no way reflect political motivation on the part of the State. The State party also points out that the Special Powers Act, which allows for unlimited detention without trial, is not applicable in the author's case and that there is therefore little likelihood that the author will be imprisoned for an indefinite time.

4.6 With regard to the author's allegations that the courts and tribunals of Bangladesh are corrupt and controlled by the Government, the State party considers that, while that may be the case for lower courts, higher courts are independent and impartial. There is therefore no evidence that the author would not be granted the benefit of an impartial and fair trial.

4.7 According to the State party, neither the risk of being tried by a Bangladeshi court nor the fact that he might be imprisoned, and could therefore be subject to ill-treatment, are reasons to prevent the author's expulsion on the basis of article 3 of the Convention.

Author's comments

5.1 The author comments on the State party's observations on the merits of the communication in a letter dated 10 August 1999.

5.2 The author points out that the State party recognizes that, in Bangladesh, extremists from certain parties lodge complaints against opponents for purely political reasons and that certain lower courts are corrupt and not independent. The State party therefore does not dispute the fact that the author would probably be imprisoned on arrival in Bangladesh, that he risks being ill-treated and tortured while being held, that he would probably be convicted by a lower court and that he would have to wait for a higher court to consider his case to obtain what might be a fair trial.

Issues and proceedings before the Committee

6.1 Before considering any of the allegations in a communication, the Committee against Torture must decide whether or not the communication is admissible under article 22 of the Convention. It has ascertained, as it is required to do in accordance with article 22, paragraph 5 (a), of the Convention, that the same matter has not been and is not being examined under another procedure of international investigation or settlement. It also notes that all domestic remedies have been exhausted and that the State party has not contested the admissibility of the communication. It therefore considers that the communication is admissible. As both the State party and the author have provided observations on the merits of the communication, the Committee proceeds with the consideration of those merits.

6.2 The issue before the Committee is whether the forced return of the author to Bangladesh would violate the obligation of the State party under article 3 of the Convention not to expel or return a person to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture.

6.3 The Committee must decide, pursuant to article 3, paragraph 1, whether there are substantial grounds for believing that the author would be in danger of being subjected to torture upon return to Bangladesh. In reaching this decision, the Committee must take into account all

relevant considerations, pursuant to article 3, paragraph 2, including the existence of a consistent pattern of gross, flagrant or mass violations of human rights. The aim of the determination, however, is to establish whether the individual concerned would be personally at risk of being subjected to torture in the country to which he or she would return. The existence of a consistent pattern of gross, flagrant or mass violations of human rights in a country does not as such constitute a sufficient ground for determining that a particular person would be in danger of being subjected to torture upon his or her return to the country. There must be other grounds indicating that the individual concerned would be personally at risk. However, the absence of a consistent pattern of gross violations of human rights does not mean that a person might not be subjected to torture in his or her specific circumstances.

6.4 The Committee recalls its general comment on the implementation of article 3, which reads:

> "Bearing in mind that the State party and the Committee are obliged to assess whether there are substantial grounds for believing that the author would be in danger of being subjected to torture were he/she to be expelled, returned or extradited, the risk of torture must be assessed on grounds that go beyond mere theory or suspicion. However, the risk does not have to meet the test of being highly probable" (A/53/44, annex IX, para. 6).

6.5 The Committee notes the arguments advanced by the author and by the State party regarding the alleged risk of the author's being tortured and considers that the latter has not produced enough evidence to show that he would run a personal real and foreseeable risk of being tortured in Bangladesh.

6.6 The Committee therefore finds that the information submitted to it does not demonstrate that there are substantial grounds for believing that the author would be in danger of being personally tortured if returned to Bangladesh.

6.7 Accordingly, the Committee against Torture, acting under article 22, paragraph 7, of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, concludes that the decision of the State party to return the author to Bangladesh does not constitute a breach of article 3 of the Convention.